

§ 3031.12 Treatment as a complaint.

If the Commission receives a volume of rate or service inquiries on the same or similar issue such that there may be cause to warrant treatment as a complaint, it may appoint an investigator to review the matter under § 3030.21 of this chapter or appoint a public representative representing the interests of the general public to pursue the matter.

Subpart B [Reserved]

PART 3032—SPECIAL RULES FOR COMPLAINTS ALLEGING VIOLATIONS OF 39 U.S.C. 404

Subpart A—General

Sec.

3032.1 Applicability.

3032.2–3032.4 [Reserved]

Subpart B—Requirements and Defenses

3032.5 Postal Service rules that create an unfair competitive advantage.

3032.6 Disclosure, transfer, and licensing of intellectual property.

3032.7 Unlawfully obtaining information.

3032.8 Statutorily authorized affirmative defense.

AUTHORITY: 39 U.S.C. 404a; 3662.

SOURCE: 79 FR 62294, Oct. 16, 2014, unless otherwise noted.

Subpart A—General

§ 3032.1 Applicability.

The rules in this part govern proceedings filed under 39 U.S.C. 3662 alleging violations of 39 U.S.C. 404a that meet the requirements of §§ 3030.2 and 3030.10 of this chapter.

§§ 3032.2–3032.4 [Reserved]

Subpart B—Requirements and Defenses

§ 3032.5 Postal Service rules that create an unfair competitive advantage.

(a) A complaint alleging a violation of 30 U.S.C. 404(a)(1) must show that a Postal Service rule, regulation, or standard has the effect of:

(1) Precluding competition; or

(2) Establishing the terms of competition.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(1), the Postal Service may demonstrate that the rule, regulation, or standard at issue does not create an unfair competitive advantage for itself or any entity funded, in whole or in part, by the Postal Service.

(c) As used in this section, the term *rule, regulation, or standard* includes, among other things, documents or policies issued by the Postal Service to exercise its regulatory authority or otherwise act as a governmental entity.

§ 3032.6 Disclosure, transfer, and licensing of intellectual property.

(a) A complaint alleging a violation of 39 U.S.C. 404a(a)(2) must show that the Postal Service has compelled or attempted to compel the disclosure, transfer, or licensing of the intellectual property of the person filing the complaint to a third party.

(b) As used in this section, the term *intellectual property* includes, among other things, patents, copyrights, trademarks, trade secrets, and proprietary information.

(c) As used in this section, the term *disclosure, transfer, or licensing of intellectual property* includes, among other things, an action that has an adverse effect on the value of intellectual property.

§ 3032.7 Unlawfully obtaining information.

(a) A complaint alleging a violation of 39 U.S.C. 404a(a)(3) must show that:

(1) The person filing the complaint has provided or sought to provide a product;

(2) The Postal Service obtained information about such product from the person filing the complaint; and

(3) The Postal Service offers or offered a postal service that uses or is based, in whole or in part, on the information obtained from the person filing the complaint.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(3), the Postal Service may demonstrate that substantially the same information was obtained (or was obtainable)

Postal Regulatory Commission

§ 3035.3

from an independent source or is otherwise obtained (or obtainable) through lawful means.

(c) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(3), the Postal Service may show that the information obtained was provided by written consent.

§ 3032.8 Statutorily authorized affirmative defense.

(a) As an affirmative defense to an allegation of a violation of 39 U.S.C. 404a(a), the Postal Service may demonstrate that it is specifically authorized by law to take the action or inaction alleged to be a violation of that section.

(b) Authority under 39 U.S.C. 401 or 39 U.S.C. 404 may not form the basis of an affirmative defense under paragraph (a) of this section.

(c) Paragraph (b) of this section does not preclude the Postal Service from arguing that a particular Postal Service regulation or other action (or inaction) does not have the requisite effect to violate 39 U.S.C. 404a(a).

PART 3035—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

Sec.

3035.1 Applicability.

3035.2 Advance notice.

3035.3 Contents of notice.

3035.4 Review.

3035.5 Commission action.

3035.6 Changes in market test.

3035.7–3035.9 [Reserved]

3035.10 Duration.

3035.11 Extension of market test.

3035.12 Cancellation of market test.

3035.13–3035.14 [Reserved]

3035.15 Dollar amount limitation.

3035.16 Exemption from dollar amount limitation.

3035.17 Prevention of market disruption.

3035.18 Filing for permanent product status.

3035.19 [Reserved]

3035.20 Data collection and reporting requirements.

AUTHORITY: 39 U.S.C. 3641.

SOURCE: 79 FR 54563, Sept. 11, 2014, unless otherwise noted.

§ 3035.1 Applicability.

The rules in this part apply to market tests of experimental products undertaken pursuant to 39 U.S.C. 3641.

§ 3035.2 Advance notice.

The Postal Service shall file notice with the Commission of its determination to initiate a market test at least 30 days before initiating the market test.

§ 3035.3 Contents of notice.

(a) Notices of proposed market tests shall include:

(1) The basis for the Postal Service's determination that the market test is governed by 39 U.S.C. 3641, which shall:

(i) Describe, from the viewpoint of mail users, how the experimental product is significantly different from all products offered by the Postal Service within the 2 fiscal years preceding the start of the market test;

(ii) Establish that the introduction or continued offering of the experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in § 3001.5(v) of this chapter; and

(iii) Identify the experimental product as either market dominant or competitive for purposes of the market test, and explain the reasoning for the categorization in accordance with the criteria set forth in 39 U.S.C. 3642(b)(1).

(2) A description of the nature and the scope of the market test that:

(i) Describes the market test and experimental product;

(ii) Demonstrates why the market test is not inconsistent with the requirements of 39 U.S.C. 3641;

(iii) Identifies the beginning and ending dates of the market test;

(iv) Describes the geographic market(s) where the market test may be conducted;

(v) Estimates the total revenue that is anticipated by the Postal Service for each fiscal year of the market test, including available supporting documentation; and

(vi) Includes a data collection plan for the market test, including a description of the specific data items to be collected. The minimum data collection plan requirements are described in § 3035.20.